

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FRANK KUNKLE, *on behalf of himself and  
all others similarly situated*,

Plaintiff,

-against-

PESCIENCE, LLC,

Defendant.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 10/23/2023

1:23-cv-5094

**ORDER OF DISMISSAL**

MARY KAY VYSKOCIL, United States District Judge:

A review of court records indicates that the complaint in this action was filed on June 16, 2023, and that no proof of service has been filed. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 90 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

In an Order dated October 2, 2023, the Court directed Plaintiff “to serve the defendant and file proof of service on the docket on or before October 20, 2023.” The Court warned that “[i]f service has not been made on or before that date, and if plaintiff fails to show cause, in writing, why service has not been made, the complaint will be dismissed for failure to prosecute pursuant to Rules 4 and 41 of the Federal Rules of Civil Procedure.” [ECF No. 5.]

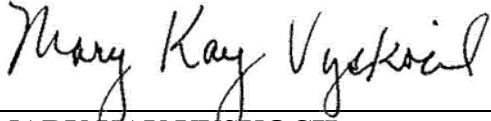
After the Court entered its Order, Plaintiff requested an Amended Summons, which was issued by the Clerk’s Office. [See ECF Nos. 6, 7, 8.] However, Plaintiff did not file proof of service on the docket on or before October 20, 2023—as directed by the Court’s Order. Moreover, Plaintiff did not request an extension of time to serve or otherwise “show cause, in writing, why

service has not been made.” [ECF No. 5.] Accordingly, this action is dismissed under Federal Rules of Civil Procedure 4(m) and 41.

The Clerk of Court is respectfully requested to close this case.

**SO ORDERED.**

**Date: October 23, 2023**  
**New York, NY**

  
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**MARY KAY VYSKOCIL**  
**United States District Judge**